IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

FAO (WCA) 272 of 2001.

Judgment reserved on 3.7.2007.

Date of Decision: 18th July, 2007.

New India Assurance Company .....Appellant.

Versus

Tahira Begum and others ……Respondents.

Coram

The Hon'ble Mr. Justice Dev Darshan Sud,Judge.

Whether approved for reporting?[1]

For the Appellant: Mr. K.D. Sood, Advocate.

For the Respondents:Mr. Sunil Chauhan, Advocate, for respondent Nos. 1 to 5.

Mr. Ajay Kumar, Advocate, for respondent No. 6.

Dev Darshan Sud, Judge.

This appeal has been preferred by the Insurance Company against the award made by the Commissioner, under the Workmen's Compensation Act Respondent-claimant Nos. 1 to 5 preferred a petition under Section 4 of the Workmen's Compensation Act (hereinafter referred to as the Act) before the Commissioner under the Workmen's Compensation Act, Shimla on the allegations that deceased Gulshan

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

Mohamad was employed as a driver by the owner respondent No. 6 Ashwani Sood to drive bus No. HP-03-0023 which met with an accident on 1.4.1996 and he died on the spot. After trial, the Commissioner allowed the claim holding the Insurance Company liable to pay the compensation awarded.

The Insurance Company had submitted before the Commissioner that at the time when the ill-fated bus met with an accident, the deceased was drunk. According to the report of the Forensic Science Laboratory, the alcoholic content of the blood of the deceased was 316 mgs. which was beyond the limits prescribed by law as provided for in the Motor Vehicles Act. The Commissioner did not accept this argument on the ground that according to the "Courts in many cases", under Workmen's Compensation Act, the fact of contributory negligence will not make any difference to the outcome. This omnibus and sweeping generalization cannot be accepted. Surely, this is not the manner to deal with a case where accidents are caused by auto intoxication. What "these cases" are, have not been noticed. Sweeping generalization of a proposition having no factual or legal foundation cannot be accepted as a statement of law, more especially from the Commissioner who is to discharge statutory duties and decide on settled principles and not on personal whims and fancies. He should be alive to the situation that while dealing with an objection which has been raised, a clear and concise finding should be given based on law and not fanciful assumption.

The appeal was admitted on two questions as formulated and filed with the appeal viz:-

(i) Whether the insurance Company is liable to pay the amount of compensation in case of an employee, who has violated the provisions of the Motor Vehicles Act and has committed a criminal offence while driving the vehicle.

(ii) Whether the insurance company is liable to pay the amount of compensation in case of an employed driver, who drives the vehicle in a totally drunken state, in violation to the provisions of the law and Motor Vehicles Act in force.

At the time of hearing of the petition, learned counsel for the appellant submitted that a third question, namely, as to whether the interest can be awarded from the date of accident or award also requires to be determined. After hearing the parties, permission was granted to the appellant to urge this question.

I have heard learned counsel for the parties and have gone through the record. Learned counsel for the appellant has submitted that report of the Forensic Science Laboratory is conclusive of the fact that deceased was drunk and the concentration of the alcohol in his blood was of such a high concentration that it was not possible for him to drive the vehicle and in the circumstances liability could not be fastened on the appellant. He has referred to Ext. RW-1/B which is the report of the Forensic Science Laboratory stating that 316 mgs. alcohol was present in sample No. 4 which was stated to contain the blood samples of the deceased sent for analysis. RW-1/C is the opinion of Dr. Kuldeep Maria stating that such concentration of alcohol in the blood, according to the medical opinion, was conclusive of the fact that the person had consumed alcohol to such an extent that he was no longer in possession of his mental faculties. Learned counsel submits that in the circumstances, no liability can be fastened on the Insurance Company as the vehicle was being driven

in violation of the policy of the Insurance. He referred to the evidence of RW-3 Dr. B.R. Rawat, Assistant Director, Forensic Science Laboratory who proved Ext. RW-3/A which is the report of the Forensic Science Laboratory. However, his cross-examination is revealing. He says " *Meri report un samples par adharit hai jo mujhe police dwara dia gai. Main yeh surety se na keh sakta hun ke samples Gulshan Mohamad kai he blood kai the. Maine sample 8.4.1996 ko receive kiya. Main na bata sakta ki sample kis tarikh ko liya gaya tha.*"

Strangely, the appellant made no effort or attempt to establish that the blood sample which was drawn, was that of deceased and that it was kept in safe custody by the police which was delivered to the Forensic Science Laboratory and during the time of its custody it has not been tampered with. Evidence on these facts is totally absent from the record. Cross-examination of RW-3 Dr. B.R. Rawat would further suggest that this witness is unsure as to whose sample was being analyzed. In these circumstances, the report Ext.RW-1/B cannot be accepted as being conclusive proof of the fact that the blood samples were in safe custody during the period from the time they were drawn till the time they were given for analysis and analysed The identity of the persons who drew the sample, the doctor who conducted the post-mortem , the person to whom such samples were handed over, the safe custody of the sample are all vital links in evidence which the appellant has failed to bring on the record. The contention of the appellant, therefore, to this cannot be accepted.

Coming to the other point which has been urged by the appellant that the interest is payable only from the date from which interest has to be allowed. Learned counsel has placed reliance on the

judgment of the Hon'ble Supreme Court in **National Insurance Co. Ltd**. vs. **Mubasir Ahmed and another 2007 (2) SCC 349**. The Hon'ble Supreme Court, while dealing with the award of interest held:-

> "Interest is payable under Section 4-A (3) if there is default in paying the compensation due under this Act within one month from the date if fell due. The question of liability under Section 4-A was dealt with by this Court in *Maghar Singh v. Jashwant Singh*. By amending Act 30 of 1995, Section 4-A of the Act was amended, *inter alia,* fixing the minimum rate of interest to be simple interest @ 12%. In the instant case, the accident took place after the amendment and, therefore, the rate of 12% as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously it cannot be the date of accident. Since no indication is there as to when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because Section 4-A (1) prescribes that compensation under Section 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication under Section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of sub-section (2) of Section 4-